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AMERICAN SECURITY INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHELE T. WAHL, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

AMERICAN SECURITY INSURANCE
COMPANY; and DOES 1-50, inclusive,

Defendant.

Case No. C08-00555-RS

**DEFENDANT AMERICAN SECURITY
INSURANCE COMPANY'S NOTICE
OF FILING OF COMPLETE
EXHIBIT D IN SUPPORT OF ITS
MOTION TO DISMISS**

1 Pursuant to this Court's oral order granting American Security Insurance Company
2 ("ASIC") leave to file additional material in response to Michelle T. Wahl's Sur-Reply,
3 ASIC hereby files a complete copy of the document attached as Exhibit D to the First
4 Amended Complaint ("Complaint"). See Order Granting Leave to File Sur-Reply and
5 Leave to Respond, Docket No. 33, at 2 (evidencing oral order made on May 21, 2008). The
6 complete document, a two-page letter with a one-page enclosure, is attached to this Notice
7 as Exhibit 1.¹

8 Exhibit 1 is an April 3, 2006, letter sent from EMC Mortgage Corporation ("EMC")
9 to Ms. Wahl, informing her that, because she allowed her Farmers policy to lapse, EMC had
10 purchased temporary insurance on her property from ASIC. Ex. 1. The letter's third page,
11 missing from plaintiff's Exhibit D attached to the Complaint, is a specimen copy of the
12 insurance binder temporarily insuring Ms. Wahl's property. *Id.* That page states that
13 coverage under the binder began on January 27, 2006, the same day that coverage
14 terminated on the Farmers' policy, and that the temporary coverage lasted for 60 days. *Id.*;
15 see also Complaint Ex. B. This is consistent with the one year policy that subsequently was
16 placed on the property, which also lists the effective date of coverage as January 27, 2006.
17 See Complaint Ex. G.

18 Ms. Wahl argued for the first time in her Sur-Reply that EMC "took no act to
19 procure substitute insurance before March 4, 2006," and as a result could not have waived
20 its protection under the Farmers LLPE until that date. Plaintiff's Sur-Reply at 3. The
21 missing third page of Exhibit D refutes that argument, further establishing that the 60-day
22 binder procured by EMC from ASIC was effective as of January 27, 2006. As is reflected
23 in the Complaint and its Exhibits, to conform with various requirements that loan collateral
24 at all times be insured, EMC and ASIC have instituted arrangements under a group master
25 policy for the issuance by ASIC of 60-day binders in the event any EMC mortgagor fails to

26
27 ¹ This Court may properly consider the letter in its entirety, as the first two pages are
28 appended to the Complaint and the document is integral to the Complaint. *Hassan v. Spicer*, No. 05-CV-1526, 2006 WL 228958 (E.D.N.Y. Jan. 31, 2006) (considering a completed copy of a document offered by the defendant).

1 maintain acceptable hazard insurance on any property securing a mortgage loan to EMC.
2 *See, e.g.*, Exhibits C and D to the Complaint. Pointing to Exhibit D, Ms. Wahl
3 enigmatically argues that the April 3, 2006 letter “is a clear admission that EMC took no act
4 to procure substitute insurance before March 4, 2006,” and as a result EMC could not have
5 waived its protection under the Farmers LLPE until that date. Sur-Reply at 3. Yet Exhibit
6 D, dated April 3, 2006, and Exhibit C, a prior letter to Ms. Wahl from EMC dated February
7 27, 2006, both expressly advised that EMC had “secured temporary insurance coverage in
8 the form of a sixty-day binder through American Security Insurance” with an effective date
9 of January 27, 2006. *See also* Complaint ¶ 16(c) (“On 2/27/06, ASIC notified Ms. Wahl in
10 writing on EMC letterhead that EMC had purchased a temporary 60-day binder of FPI from
11 ASIC”) (emphasis added). Thus, the Complaint, its Exhibits, and plaintiff’s own allegations
12 demonstrate that EMC secured temporary coverage from ASIC on Ms. Wahl’s property that
13 became effective *simultaneously* with the cancellation of Ms. Wahl’s Farmers coverage.

14 The date on which EMC obtained coverage in advance from ASIC and on which
15 coverage began was January 27, 2006—as is described in the February 27, 2006 letter (Ex.
16 C), the April 3, 2006 letter (Ex. D), and the declaration page for the one-year policy (Ex.
17 G). Accordingly, EMC did not “back-date” its coverage, as Ms. Wahl alleges in the Sur-
18 Reply. Sur-Reply at 3. Rather, EMC cancelled coverage under the express terms of the
19 Farmers LLPE by securing alternative insurance coverage from ASIC *in advance*. EMC
20 obtained insurance coverage from ASIC on Ms. Wahl’s property on January 27, 2006, and
21 EMC waived any coverage under the Farmers LLPE on that date, foreclosing any “overlap”
22 between the two policies.

1 For the forgoing reasons, ASIC respectfully requests that this Court consider the
2 attached Exhibit 1, which is the complete document of Exhibit D to the Complaint.
3 Furthermore, after considering Exhibit 1, this Court should dismiss the Complaint for the
4 reasons set forth herein and in all of the other papers submitted in support of ASIC's motion
5 to dismiss.

6 Dated: May 23, 2008

HELLER EHRMAN LLP

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8 By: /s/ Peter S. Hecker

PETER S. HECKER

9 Attorneys for Defendant
10 AMERICAN SECURITY INSURANCE
11 COMPANY
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EXHIBIT 1

EMC MORTGAGE CORPORATION
ITS SUCCESSORS AND/OR ASSIGNS
P O BOX 7589
SPRINGFIELD, OH 45501-7589



04/03/2006

A1

MICHELLE T WAHL
785 LOGAN CREEK ROAD
BOULDER CREEK, CA 95006-8700

Subject: Loan Number: 0007852643
 Hazard Insurance: 01/27/2006
 Property Address: 785 LOGAN CREEK ROA
 BOULDER CREEK, CA 95006

Dear Customer:

Please read this letter carefully as it contains important information that could affect your monthly mortgage payment and the insurance coverage of your home. If you have any questions, please call our Customer Service Department at the number shown below.

Approximately thirty days ago, EMC Mortgage Corporation (EMC) notified you that our records indicate that we had not received a new or renewal insurance policy covering your house. To date it appears that you do not have insurance coverage on your home. Your loan documents require that hazard insurance be maintained on the property. Failure to do so is a breach of that requirement.

The temporary insurance coverage we secured is in the form of a sixty-day binder through American Security Insurance Company and is now 30 days old. This binder cannot be renewed. It covers your house for risks of direct loss subject to the terms of the policy. It does not protect your personal property, nor does it protect you from liability against injuries that may occur on your property. For example, if your house were burglarized, it would not cover the loss or replacement of stolen property.

Any policy purchased on your behalf may be cancelled at any time by providing proof of acceptable insurance. ('Acceptable insurance' is insurance provided by a carrier with a Best Key Rating of B+ or better and is in the amount of your unpaid principal balance or the insurable value of your home, whichever is less.) You will then be charged only for the period of time this policy was in effect. Any unused premium will be refunded to your escrow account.

If you do not provide us with proof of insurance coverage before the end of the binder period, we will be required to obtain a one-year policy on your property. The full year premium for this policy is shown on the attached binder. This premium will be charged to your escrow account at the end of the binder period. If you do not have an escrow account, one will be established. Your monthly mortgage payment will increase to include the cost of this policy.

The amount of insurance shown on the binder is based on the last known amount on your lapsed policy. If you have information to verify that the amount should be different, please notify us. This request must be in writing and should be sent to the address shown below. Please include your account number on your letter.



Two MacArthur Ridge, 909 Hidden Ridge Drive, Suite 200, Irving, Texas 75038
MAILING ADDRESS: P.O. Box 141358, Irving, Texas 75014-1358

AMSHDT01

Since this policy will insure your house without inspection, the cost may be much higher than you would normally pay if you purchase a policy from an agent and/or insurance company of your choice. The coverage amount provided may be less than you had before.

We have incurred expenses in placing this insurance binder and policy on your structure. Such expenses are recoverable by us as stated in your loan documents. Part of the policy premium charged to your escrow account may be used by American Security Insurance Company to reimburse us for these expenses.

This policy only insures the structure. It does not protect any personal property nor does it protect you from liability against accidents that may occur on your property. For example, if your house were burglarized, this policy would not cover any loss or replacement of the stolen property. You have the right to purchase hazard insurance coverage from an insurance company of your choice. **Please contact your agent or company and purchase coverage.** If you have already done so, please request proof of coverage and send it to the address below. Please be sure your policy includes your loan number and a Mortgagee Clause or Lenders Loss Payable Endorsement made out to:

EMC MORTGAGE CORPORATION
ITS SUCCESSORS AND/OR ASSIGNS
P O BOX 7589
SPRINGFIELD, OH 45501-7589
Attention: Insurance Department
Loan Number: 0007852643

Upon receipt of your policy, this binder will be promptly cancelled. There is no charge to you if there has been no lapse in coverage. You will however be charged for any lapse of coverage between your last policy and the new policy, if any.

We thank you for your assistance. If you or your insurance agent has any questions or believes there is an error in our records, please call our Customer Service Department at 1-877-406-4372 , Monday through Friday between 8:00 a.m. and 6:00 p.m. Central Time.

Sincerely,

Customer Service Representative

If your loan is currently in bankruptcy, this is not an attempt to collect a debt.

AMSBOT02

AGENCY		
Make	Size	Model
07786	104	150
LOAN NUMBER 0007052643		

American Security Insurance Company
PO BOX 50355
ATLANTA GA, 30302

04/03/2006

INSURANCE BINDER

POLICY NUMBER:
04H087852643

ADDITIONAL INSURED-NAME AND ADDRESS :

MICHAEL T WAHL
785 LOGAN CREEK ROAD
BOULDER CREEK, CA 95006-8700

NAMED INSURED MORTGAGEE-NAME AND ADDRESS :

EMC MORTGAGE CORPORATION
ITS SUCCESSORS AND/OR ASSIGNS
P O BOX 7589
SPRINGFIELD, OH 45501-7589
PHONE (877) 406-4372

Binder period :				Described Location (if different from mailing address above)
EFFECTIVE TIME: [] NOON [x] 12:01 AM				
INCEPTION	Mo.	Day	Yr.	785 LOGAN CREEK ROA
	01/27/2006			BOULDER CREEK, CA 95006
EXPIRATION	Annual Premium			
	03/28/2006			
Coverage Amount				
\$ 603,000				
Annual Premium				
\$ 4,052.00				

Please note that this binder is for a 60 day period. It can not be renewed.

The premium shown above is for a full one year policy. The lender will place a policy for you if you do not give them proof of insurance on your house. You will be charged for each day that you do not have your own insurance policy.

This binder covers your house for risk of direct loss subject to the terms of the policy. This coverage is limited to the house only. Your personal property and liability are not covered. For example, if your house was burglarized, it would not cover the stolen property.

CLAIMS INFORMATION ONLY

ALL OTHER INQUIRIES

1-800-652-1262

1-877-406-4372